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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 KIMBERLY ANN SMITH,

11 Plaintiff,

12 v.

13 CAROLYN COLVIN,

14 Defendant.

CASE NO. C14-0066JLR

ORDER ADOPTING REPORT  
AND RECOMMENDATION

15 **I. INTRODUCTION**

16 This matter comes before the court on the Report and Recommendation (“R&R”) of United States Magistrate Judge Brian A. Tsuchida (R&R (Dkt. # 18)), and Plaintiff  
17 Kimberly Ann Smith’s objections thereto (Objections (Dkt. # 19)). Having carefully  
18 reviewed all of the foregoing, along with all other relevant documents and the governing  
19 law, the court ADOPTS the R&R, AFFIRMS the decision of the Administrative Law  
20 Judge (“ALJ”), and DISMISSES Ms. Smith’s complaint with prejudice.  
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## II. BACKGROUND

Ms. Smith is a 53-year-old female who applied for and was denied social security benefits. (ARII (Dkt. # 10-10) at 42, 44.) She suffers from anxiety disorder, post traumatic stress disorder, and bipolar disorder, and previously worked as a retail manager. (*Id.* at 32; ARI (Dkt. # 10-2) at 27.) She has not held full-time employment since March 2009. (ARII at 32.) This is the second time this matter comes before the court. Ms. Smith's initial denial of benefits was remanded for reconsideration of medical opinion evidence, Ms. Smith's credibility, and the evaluation process. *See Smith v. Astrue*, No. C09-1582RSL-MAT, 2010 WL 2696476 (W.D. Wash. June 4, 2010), *adopted by Smith v. Astrue*, No. C09-1582RSL, 2010 WL 2696481 (W.D. Wash. July 6, 2010). In August 2011, the ALJ conducted a second hearing and concluded that Ms. Smith is not disabled and thus not entitled to disability benefits. (ARII at 44.) Ms. Smith appealed but the Appeals Council declined to assume jurisdiction of the case. (*Id.* at 2-4.) She then appealed to this court. (R&R at 2.) Magistrate Judge Tsuchida issued an R&R recommending that the Commissioner be affirmed (*see* R&R), and Mr. Hall objected to that R&R (*see* Objections).

## III. STANDARD OF REVIEW

A district court has jurisdiction to review a Magistrate Judge's R&R on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The court

1 reviews de novo those portions of the R&R to which specific written objection is made.  
 2 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). “The  
 3 statute makes it clear that the district judge must review the magistrate judge’s findings  
 4 and recommendations de novo if objection is made, but not otherwise.” *Id.* When no  
 5 objections are filed, the court need not review de novo the R&R. *Wang v. Masaitis*, 416  
 6 F.3d 992, 1000 n.13 (9th Cir. 2005).

7 Although review of an R&R is de novo, the court must defer to the ALJ’s factual  
 8 findings and may set aside the Commissioner’s denial of social security benefits only if  
 9 the ALJ’s findings are based on legal error or not supported by substantial evidence in the  
 10 record. 42 U.S.C. § 405(g); *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). In  
 11 this way, the court’s review of the R&R is different from the court’s review of the  
 12 underlying decision of the ALJ. With respect to the underlying decision, the court must  
 13 examine the record as a whole and may not reweigh the evidence or substitute its  
 14 judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
 15 2002). The ALJ determines credibility, resolves conflicts in medical testimony, and  
 16 resolves any other ambiguities that may exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039  
 17 (9th Cir. 1995). When the evidence is susceptible to more than one rational  
 18 interpretation, the court must uphold the ALJ’s conclusion. *Thomas*, 278 F.3d at 954.

#### 19 IV. DISCUSSION

20 Ms. Smith objects to Magistrate Judge Tsuchida’s conclusion that the ALJ gave  
 21 clear and convincing reasons for rejecting the opinions of treating psychiatrist Mary  
 22 Bartels, M.D., and clinical case manager Daniel Davidson, MA, LMHCA. (Obj. at 2;

1 R&R at 5.) Her objection pertains to a joint opinion letter of Dr. Bartels and Mr.  
2 Davidson, and three other written statements of Dr. Bartels. As explained in more detail  
3 below, the court concludes that none of Ms. Smith's objections raise issues that justify  
4 reversing the ALJ or otherwise disagreeing with the reasoning contained in Magistrate  
5 Judge Tsuchida's R&R.

6 **A. August 2011, joint opinion letter was properly rejected**

7 First, Ms. Smith argues that the ALJ erred in considering medical opinion  
8 evidence prior to September 2009, in determining that an August 2011, letter was  
9 inconsistent with other opinions of Dr. Bartels. She claims that the August 2011, letter  
10 "clearly described" a decline in her mental health beginning in September 2009. (Obj. at  
11 4.) Thus, she concludes that evidence suggesting her condition was manageable prior to  
12 the alleged date of decline is consistent with the August 2011, letter. (*Id.*)

13 This argument is unpersuasive and raises no new issues. Magistrate Judge  
14 Tsuchida correctly concluded that the records relied upon by the ALJ were within the  
15 amended period of disability and so were properly considered as medical opinion  
16 evidence. (R&R at 6.) He also notes that the ALJ considered this evidence along with  
17 other evidence documented after Ms. Smith's alleged decline. (R&R at 6-8.) It is not the  
18 role of the court in such cases to reweigh the evidence or substitute its judgment for that  
19 of the Commissioner. *Thomas*, 278 F.3d at 954. It is the job of the ALJ, not the court, to  
20 resolve conflicts in medical testimony. *Andrews*, 53 F.3d at 1039. Here, the court cannot  
21 conclude that medical opinion evidence occurring between the amended period of  
22 disability and the alleged date of decline is susceptible to only one rational interpretation.

1 *Thomas*, 278 F.3d at 954. The ALJ, therefore, did not err in considering that evidence to  
2 support its finding regarding inconsistency.

3         Second, Ms. Smith argues that the ALJ failed to consider certain notes and  
4 opinions in determining that the August 2011, letter was inconsistent with other opinions  
5 of Dr. Bartels. (Obj. at 8.) She references medical notes made by Dr. Bartels and others  
6 that emphasize the decline of her mental health beginning in September 2009, to support  
7 her contention that those notes are consistent with the August 2011 letter. (*Id.* at 5-7.) In  
8 so doing, Ms. Smith simply asks the court to adopt her interpretation of the evidence.  
9 Here, the ALJ considered the letters and opinions to which Ms Smith cites and reached a  
10 different conclusion, one supported by specific facts in the record. (*See id.* at 7-8.) Once  
11 again, it is not the role of the court to reweigh evidence. *Thomas*, 278 F.3d at 954. Here,  
12 the evidence on this issue is susceptible to more than one rational interpretation, so the  
13 court must defer to the ALJ's conclusion that the August 2011, letter was inconsistent  
14 with Dr. Bartels's other opinions. *See id.*

15         Third, Ms. Smith argues that the ALJ relied on a mischaracterization of the August  
16 2011, letter to justify rejecting it. The ALJ concluded that the opinion appeared to "relate  
17 her symptoms more to situational stressors than clinical mental disorders." (R&R at 6  
18 (citing ARII at 41).) The ALJ supported this conclusion with language from the letter  
19 attributing Ms. Smith's symptoms to issues with finances and housing, and with other  
20 evidence concerning family issues. (*Id.* at 6-7.) Ms. Smith argues that the correct  
21 interpretation of this portion of Dr. Bartels's letter is that her inability to tolerate stressors  
22 is a symptom of her mental illness. (Obj. at 8-10.)

1 This argument is equally unpersuasive. Again, it is the role of the ALJ, not the  
2 court, to resolve conflicting or ambiguous medical evidence. *Andrews*, 53 F.3d at 1039.  
3 The ALJ made a rational interpretation of the evidence. He also supported his finding  
4 with specific and legitimate reasons substantiated by evidence in the record. The court  
5 agrees, therefore, with Magistrate Judge Tsuchida that the ALJ's conclusions should be  
6 upheld.

7 **B. November 2009, March 2010, and August 2011, opinions were properly**  
8 **rejected**

9 The ALJ rejected three other opinions of Dr. Bartels because they were  
10 inconsistent with the doctor's other findings and Ms. Smith's daily activities, and  
11 contained what amounts to a legal conclusion regarding Ms. Smith's disability. (R&R at  
12 8.) First, Ms. Smith argues that the ALJ erred in rejecting these opinions because one of  
13 the doctor's observations regarding Ms. Smith's eye contact was not "wholly supported  
14 by the record." (Obj. at 10.)

15 This argument was thoroughly and correctly addressed by Magistrate Judge  
16 Tsuchida. He notes that the ALJ relied on evidence that Ms. Smith was "progressing  
17 well," and that she was "moving towards recovery," in addition to the disputed eye  
18 contact evidence. (R&R at 8-9 (citing ARII at 41).) These observations constitute  
19 specific and substantial evidence supporting the ALJ's finding (*see id.*), but Ms. Smith  
20 urges the court to overturn this finding in favor of an alternative interpretation that could  
21 be reached by placing greater weight on evidence that supports her position (*see* Obj. at  
22 10). The court reiterates that this is not its proper role in reviewing the ALJ's decision.

1 *Thomas*, 278 F.3d at 954. Because the evidence before the ALJ was susceptible to more  
2 than one rational interpretation, the court must uphold the ALJ's conclusion. *See id.*

3 Second, Ms. Smith claims that the ALJ erred by rejecting Dr. Bartels's opinion  
4 that Ms. Smith is disabled on the basis that it was a legal conclusion. (Obj. at 9.)  
5 Magistrate Judge Tsuchida, however, correctly noted that "an opinion that a claimant is  
6 'disabled' or 'unable to work' is not a medical opinion" and need not be given special  
7 consideration because such an issue is reserved to the Commissioner. (R&R at 9 (citing  
8 20 C.F.R § 404.1527(d)).) Ms. Smith claims that this rule was incorrectly applied to non-  
9 conclusory opinions of Dr. Bartels. (Obj. at 9-10.) This argument is without merit and  
10 raises no new issues that are not adequately addressed in Magistrate Judge Tsuchida's  
11 R&R.

## 12 V. CONCLUSION

13 In sum, Ms. Smith's objections were correctly addressed by Magistrate Judge  
14 Tsuchida's R&R. Moreover, the court has thoroughly examined the record before it and  
15 finds the Magistrate Judge's reasoning is persuasive in light of the record. For these  
16 reasons, the court ADOPTS the Report and Recommendation (Dkt. # 18) in its entirety,  
17 AFFIRMS the decision of the ALJ, DISMISSES Ms. Smith's complaint with prejudice,

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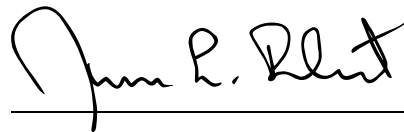
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1 and DIRECTS the Clerk to send copies of this Order to Ms. Smith, to counsel for  
2 respondent, and to Magistrate Judge Tsuchida.

3 Dated this 9th day of September, 2014.

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JAMES L. ROBART  
United States District Judge